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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,958	06/14/2005	Johannes Maria Evers	C7703(V)	9481

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EXAMINER	
NGUYEN, TRI V	
ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/538,958	EVERS ET AL.	
	Examiner	Art Unit	
	Tri V. Nguyen	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *08/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. Claims 1, 4 and 8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 7 of U.S. Patent No. 6846790. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are directed towards a similar dry cleaning process with a similar solution.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2, 4-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Evers et al. (US 6,846,790).

Evers et al. disclose a dry cleaning process where colored woven cotton is treated with a composition comprising 0.5 wt % of a surfactant and a balance of nanofluoromethoxybutane solvent followed by a treatment with a composition comprising 0.5 wt % of a surfactant, 1.0 wt % of water and a balance of nanofluoromethoxybutane (see example 2, col 16). The LCR for the example is 13.

Regarding claim 2, the prior art of Evers et al. teach acidic surfactants in col 11, ln 58-60, col 12, ln 14-15 and ln 16-17 with sufficient specificity to constitute anticipation of the material limitation of the instant claims to the surfactant being acidic.

Regarding claim 9, the surfactant to cloth ratio for the example is 0.065 % (as calculated from the wt %).

Accordingly, the teachings of Evers et al. anticipate the material limitations of the present claims.

The applied reference has a common inventorship/assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evers et al. (US 6,846,790).

Although Evers et al generally teaches the dry cleaning method with a liquid to cloth ratio above 1, the reference does not require the LCR to be at most 10 with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a dry cleaning method, as taught by Evers et al, in which the LCR used is in the claimed amounts disclosed and taught by Evers et al since the dry cleaning method requires the fabric to be in contact with the dry cleaning solution in sufficient amounts for the cleaning purposes. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a dry cleaning solution amounts is expressly suggested by the Evers et al disclosure (see col 3, liens 42-46) and therefore is an obvious formulation.

Furthermore, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium MetalsCorp. of America v. Banner,* 778F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05I. The patentees' disclosure of an LCR of 13 in example 1 on col 16 is seen as close enough absent of unexpected results.

5. Claims 1-3 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al. (US 2002/0115582) in view of Goedhart et al. (2002/0142932).

Perry et al. disclose a dry cleaning method that uses the same formulation as the applicant (see page 1, parag. 10) with an acidic surfactant (page 2, parag. 36; page 3, parag. 46 and page 4, parag. 54) to treat colored fabric (page 5, parag. 65-66).

Perry et al. fail to specifically disclose a dry cleaning composition comprising the dry cleaning solvent, water and surfactant in the amounts as those recited by the Applicant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for

the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim,* 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff,* 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

Perry et al. do not explicitly disclose a liquid to cloth ratio of at most 20 or 10. In the analogous art of dry cleaning, Goedhart et al. disclose the feature of cloth ratio of 13 (page 3, parag. 50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Perry et al., with the feature of contacting the colored fabric in a dry cleaning in a dry cleaning solution. One would have been motivated to modify the method to ensure that the dry clean solution is sufficiently contacting the fabric for cleaning purposes while optimizing the solution volume to minimize the needed dry cleaning solution.

Furthermore, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium MetalsCorp. of America v. Banner,* 778F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05I. The Goedhart's disclosure of an LCR of 13 in example on page 3, parag. 50 is seen as close enough absent of unexpected results.

6. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al. in view of Goedhart et al. as applied to claim 1 above and further in view of Giampalmi et al. (US 3,689,211).

Perry et al. and Goedhart et al. disclose the dry cleaning method of claim 1 above but do not explicitly disclose a secondary low aqueous step. In the analogous art of dry cleaning, Giampalmi et al. disclose the feature of non-aqueous step followed by a low aqueous step (col 1, line 66 to col 2, line 37). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Perry et al., with the feature of further contacting the colored fabric with a low aqueous solution. One would have been motivated to modify the method to ensure that different types of stains are treated and minimize adverse effect depending the nature of the fabric.

Perry et al., Goedhart et al. and Giampalmi et al. fail to specifically disclose a dry cleaning composition comprising the dry cleaning solvent, water and surfactant in the amounts as those recited by the Applicant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a

prima facie case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim,* 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff,* 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri V. Nguyen whose telephone number is (571) 272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NVT

nvt

Lorna M. Douyon

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PRIMARY EXAMINER